Kanagasingam a/l Kandiah v Shireen a/p Chelliah Thiruchelvam & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22F-1–06 OF 2020
EVROL MARIETTE PETERS J
6 JANUARY 2026

Family Law — Maintenance — Spousal — Setting aside — Application to set aside spousal maintenance provisions in decree nisi and subsequent consent orders and contempt order on ground of fraud — Plaintiff contended that true cause of marital collapse was first defendant's adulterous relationship with second defendant — Whether first defendant fraudulently concealed her adulterous relationship with second defendant during original divorce proceedings, culminating in grant of decree nisi — Whether first defendant was 'living in adultery' with second defendant — Whether first defendant fraudulently concealed her marriage to second defendant — Whether there was collusion between first and second defendants to mislead court for financial gain — Implications of first defendant's fraudulent conduct on court orders granted — Evidence Act 1950 s 44 — Law Reform (Marriage and Divorce) Act 1976 s 82

The plaintiff and the first defendant were married in August 1994 and were blessed with four children. However, the marriage later deteriorated significantly allegedly due to the plaintiff's acts of cruelty. The plaintiff denied this allegation and contended that the true cause of the marital collapse was the first defendant's adulterous relationship with the second defendant. Following the full hearing of the divorce petition in 2011, the High Court granted decree nisi, thereby dissolving the marriage, awarding custody of three children of the marriage to the first defendant, and ordering the payment of spousal and child maintenance. Subsequently, in April 2012, the first defendant entered into a marriage with the second defendant but at the material time, the plaintiff had no knowledge of the said marriage. Despite having remarried, the first defendant, between 2012 and 2019, repeatedly instituted contempt proceedings against the plaintiff to enforce the spousal and child maintenance orders. These proceedings gave rise to several consent orders ('the consent orders'), each imposing further obligations on the plaintiff. Ultimately, the enforcement actions culminated in a committal order issued in May 2019 ('the committal order'), pursuant to which the plaintiff was imprisoned for 51 days due to non-compliance with multiple terms of the consent orders. In October 2019, the plaintiff discovered about the first defendant's marriage with the second defendant which prompted the plaintiff to file the present action to set aside the spousal maintenance provisions of the decree nisi and the subsequent consent orders and contempt order and to claim for restitution of wrongfully

paid maintenance, together with aggravated and exemplary damages. The plaintiff alleged that the entire foundation of the first defendant's financial claims was built on fraud and collusion with the second defendant. In this regard, the plaintiff relied on s 44 of the Evidence Act 1950. The issues to be determined by the court were as followed: (a) whether the first defendant had fraudulently concealed her adulterous relationship with the second defendant during the original divorce proceedings, between 2009–2011, culminating in the decree nisi granted in October 2011 ('Phase 1'); (b) whether the first defendant was 'living in adultery' with the second defendant between October 2011 and April 2012 ('Phase 2'); (c) whether the first defendant had fraudulently concealed her marriage to the second defendant — this was in relation to the period after the marriage of the first defendant to the second defendant in April 2012 ('Phase 3'); (d) whether there was collusion between the first and second defendants to mislead the court for financial gain; and (e) what were the implications of the first defendant's fraudulent conduct, if at all, on the court orders granted.

Held, allowing the plaintiff's claim in part with costs of RM200,000 subject to allocator:

(1) During the trial of the divorce petition, the learned trial judge, Yeoh Wee Siam J found that there was 'no proof of any sexual act or adultery'. In the court's view, the question of whether adultery occurred, whether prior to the breakdown of the marriage or thereafter, but before the issuance of the decree nisi, had already been conclusively determined by the court. This conclusion was further reinforced by the dismissal of the plaintiff's appeal to the Court of Appeal, confirming that the matter was res judicata and could not be re-litigated. Further, the plaintiff's case would also fail on the merits because the plaintiff's case rested largely on inference and suspicion rather than cogent and compelling proof. As such, for the purposes of Phase 1 of the court's analysis, the court was satisfied that the plaintiff had failed to establish any fraud on the part of the defendants in concealing an alleged adulterous relationship, there being no evidence that adulterous occurred in the first place (see paras 21–23, 28 & 30–31).

(2) In relation to the second issue, the court found that a mere change of address did not, of itself, establish cohabitation or 'living in adultery'. In addition, the fact that the defendants had expressed an intention to marry, an intention that ultimately culminated in their marriage in April 2012, did not, of itself, constitute proof that the defendants had engaged in a sexual relationship prior to that date. Accordingly, the plaintiff had failed to discharge the burden of establishing that the first defendant was living in adultery with the second defendant, between October 2011 and April 2012. In the circumstances, the statutory threshold required (pursuant to s 82(1) of the Law Reform (Marriage and Divorce) Act 1976

('Act 164')) to disentitle the first defendant to spousal maintenance between October 2011 and April 2012 was not met (see paras 34, 41–42 & 45–46).

(3) Based on the evidence, the court concluded that during Phase 3, the defendants had fraudulently concealed their marriage to deceive the plaintiff into continuing to pay spousal maintenance. The following were the court's reasons: (a) the first defendant had concealed her marriage to the second defendant by not registering it; (b) the first defendant filed multiple committal applications to enforce, inter alia, the order for spousal maintenance and on each occasion she failed to disclose this material fact, notwithstanding that she was under a clear and continuing duty to do so; and (c) the explanations advanced by the first defendant for her failure to disclose her marriage to the second defendant were inconsistent and vacillating (see paras 51–52, 54 & 56).

(4) In the present suit, the plaintiff had successfully obtained judgment in default against the second defendant after he had failed to respond to the cause papers. The first defendant's inability to provide any credible account for the second defendant's deliberate absence from these proceedings was striking. Given their marital relationship, her professed ignorance of his whereabouts was simply untenable. In the court's view, this evasive conduct constituted clear proof of the fraudulent collusion between the defendants, demonstrating a concerted effort to mislead the court and conceal their joint participation in the scheme (see paras 59–61).

(5) The critical fact in the present case was that the plaintiff's agreement to the consent orders was secured by fraud. The first defendant's deliberate concealment of her remarriage, a fact which, under s 82 of Act 164, extinguished her very entitlement to spousal maintenance, vitiated the consent at its root. This fraudulent misrepresentation formed the fundamental premise upon which the entire agreement, and subsequently the court's approval, was based. Where consent was founded on a material falsehood, such consent was rendered voidable, and the resulting consent orders could not stand. Consequently, pursuant to the court's inherent jurisdiction, the court ordered for the reimbursement of spousal maintenance amounting to RM310,000 (see paras 65 & 72–73).

(6) With respect to the plaintiff's claim for aggravated damages, by taking into account the seriousness of the defendants' conduct, the period over which it persisted, and the distress and prejudice occasioned to the plaintiff, the court was of the view that an award of aggravated damages in the sum of RM400,000 was fair, proportionate, and reasonable in the circumstances. Further, the court found that the first defendant did not demonstrate any remorse or candour, instead, she had repeatedly sought

to deflect responsibility by asserting that the plaintiff was likewise not blameless. The court found that the defendants' conduct was egregious and utterly reprehensible which warranted the imposition of punitive or exemplary damages. As such, the court was satisfied that an award of exemplary damages in the sum of RM300,000 was fair, proportionate, and appropriate (see paras 80, 86 & 88–89).

[Bahasa Malaysia summary

Plaintif dan defendan pertama telah berkahwin pada Ogos 1994 dan dikurniakan empat orang anak. Walau bagaimanapun, hubungan perkahwinan tersebut kemudiannya merosot dengan ketara didakwa disebabkan oleh kezaliman plaintif. Plaintif menafikan dakwaan ini dan berhujah bahawa punca sebenar keruntuhan rumah tangga tersebut adalah hubungan zina defendan pertama dengan defendan kedua. Berikutan pendengaran penuh petisyen perceraian pada tahun 2011, Mahkamah Tinggi telah mengeluarkan dekri nisi, dengan itu membubarkan perkahwinan tersebut, memberikan hak jagaan tiga orang anak hasil perkahwinan tersebut kepada defendan pertama, dan memerintahkan pembayaran nafkah pasangan dan anak. Seterusnya, pada April 2012, defendan pertama berkahwin dengan defendan kedua tetapi pada masa tersebut, plaintif tidak mengetahui tentang perkahwinan tersebut. Walaupun telah berkahwin semula, defendan pertama, antara 2012 dan 2019, berulang kali memulakan prosiding penghinaan terhadap plaintif untuk menguatkuasakan perintah nafkah pasangan dan anak. Prosiding ini menimbulkan beberapa perintah persetujuan ('perintah-perintah persetujuan tersebut'), setiap satunya mengenakan obligasi selanjutnya ke atas plaintif. Akhirnya, tindakan penguatkuasaan tersebut memuncak dengan perintah komital yang dikeluarkan pada Mei 2019 ('perintah komital tersebut'), yang mana plaintif telah dipenjarakan selama 51 hari kerana tidak mematuhi pelbagai terma perintah-perintah persetujuan tersebut. Pada Oktober 2019, plaintif mengetahui tentang perkahwinan defendan pertama dengan defendan kedua yang mendorong plaintif untuk memfailkan tindakan semasa untuk mengenepikan peruntukan nafkah pasangan dalam dekri nisi dan perintah-perintah persetujuan serta perintah penghinaan yang berikutnya dan untuk menuntut restitusi nafkah yang dibayar secara salah, bersama-sama dengan ganti rugi teruk dan teladan. Plaintif mendakwa bahawa keseluruhan asas tuntutan kewangan defendan pertama dibina atas fraud dan pakatan sulit dengan defendan kedua. Dalam hal ini, plaintif bergantung pada s 44 Akta Keterangan 1950. Isu-isu yang perlu ditentukan oleh mahkamah adalah seperti berikut: (a) sama ada defendan pertama telah menyembunyikan hubungan zinanya dengan defendan kedua secara fraud semasa prosiding perceraian asal, antara 2009-2011, yang berakhir dengan dekri nisi yang diberikan pada Oktober 2011 ('Fasa 1'); (b) sama ada defendan pertama 'hidup dalam perzinaan' dengan defendan kedua antara Oktober 2011 dan April 2012 ('Fasa 2'); (c) sama ada defendan pertama telah menyembunyikan perkahwinannya dengan defendan kedua secara fraud — ini berkaitan dengan tempoh selepas

perkahwinan defendan pertama dengan defendan kedua pada April 2012 ('Fasa 3'); (d) sama ada terdapat pakatan sulit antara defendan pertama dan kedua untuk mengelirukan mahkamah bagi keuntungan kewangan; dan (e) apakah implikasi daripada tindakan fraud defendan pertama, jika ada, terhadap perintah-perintah mahkamah yang diberikan.

Diputuskan, membenarkan sebahagian tuntutan plaintif dengan kos sebanyak RM200,000 tertakluk kepada alokator:

(1) Semasa perbicaraan petisyen perceraian, hakim bicara yang bijaksana, Yeoh Wee Siam H mendapati bahawa 'no proof of any sexual act or adultery'. Pada pandangan mahkamah, persoalan sama ada zina berlaku, sama ada sebelum perceraian perkahwinan atau selepas itu, tetapi sebelum pemberian dekri nisi, telah pun ditentukan secara muktamad oleh mahkamah. Kesimpulan ini diperkukuhkan lagi dengan penolakan rayuan plaintif di Mahkamah Rayuan, yang mengesahkan bahawa perkara tersebut adalah res judicata dan tidak boleh dibicarakan semula. Tambahan pula, kes plaintif juga akan gagal berdasarkan merit kerana kes plaintif sebahagian besarnya bergantung pada inferens dan syak wasangka dan bukannya keterangan yang meyakinkan. Oleh itu, untuk tujuan analisis mahkamah bagi Fasa 1, mahkamah berpuas hati bahawa plaintif telah gagal membuktikan apa-apa fraud di pihak defendan-defendan dalam menyembunyikan dakwaan hubungan zina, memandangkan tiada keterangan bahawa zina berlaku (lihat perenggan 21–23, 28 & 30–31).

(2) Berhubung dengan isu kedua, mahkamah mendapati bahawa pertukaran alamat sahaja tidak dengan sendirinya membuktikan hubungan bersama atau 'hidup dalam perzinaan'. Di samping itu, hakikat bahawa defendan-defendan telah menyatakan niat untuk berkahwin, satu niat yang akhirnya membawa kepada perkahwinan mereka pada April 2012, tidak dengan sendirinya menjadi bukti bahawa defendan-defendan telah terlibat dalam hubungan seksual sebelum tarikh tersebut. Oleh itu, plaintif telah gagal untuk melepaskan beban untuk membuktikan bahawa defendan pertama hidup dalam perzinaan dengan defendan kedua, antara Oktober 2011 dan April 2012. Dalam keadaan tersebut, ambang statutori yang diperlukan (menurut s 82(1) Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta 164')) untuk menafikan hak defendan pertama daripada nafkah pasangan antara Oktober 2011 dan April 2012 tidak dipenuhi (lihat perenggan 34, 41–42 & 45–46).

(3) Berdasarkan keterangan, mahkamah menyimpulkan bahawa semasa Fasa 3, defendan-defendan telah menyembunyikan perkahwinan mereka secara fraud untuk memperdaya plaintif agar terus membayar nafkah pasangan. Berikut adalah alasan-alasan mahkamah: (a) defendan

pertama telah menyembunyikan perkahwinannya dengan defendan kedua dengan tidak mendaftarkannya; (b) defendan pertama memfailkan beberapa permohonan komital untuk menguatkuasakan, antara lain, perintah nafkah pasangan dan pada setiap kesempatan tersebut dia gagal mendedahkan fakta penting ini, walaupun dia mempunyai kewajipan yang jelas dan berterusan untuk berbuat demikian; dan (c) penjelasan yang dikemukakan oleh defendan pertama atas kegagalannya mendedahkan perkahwinannya dengan defendan kedua adalah tidak konsisten dan berubah-ubah (lihat perenggan 51–52, 54 & 56).

(4) Dalam saman semasa, plaintif telah berjaya mendapatkan penghakiman ingkar terhadap defendan kedua selepas dia gagal memberi maklum balas kepada kertas kausa. Ketidakupayaan defendan pertama untuk memberikan apa-apa keterangan yang boleh dipercayai atas ketidakhadiran defendan kedua yang sengaja daripada prosiding ini adalah sangat ketara. Memandangkan hubungan perkahwinan mereka, tindakan defendan pertama yang pura-pura tidak tahu tentang keberadaan defendan kedua tidak dapat dipertahankan. Pada pandangan mahkamah, tindakan mengelak ini merupakan bukti jelas tentang pakatan sulit penipuan antara defendan-defendan, menunjukkan usaha bersepadu untuk mengelirukan mahkamah dan menyembunyikan penyertaan bersama mereka dalam skim tersebut (lihat perenggan 59–61).

(5) Fakta kritikal dalam kes semasa ialah persetujuan plaintif terhadap perintah-perintah persetujuan tersebut telah didapati melalui fraud. Penyembunyian sengaja defendan pertama tentang perkahwinan semulanya, satu fakta yang, di bawah s 82 Akta 164, menghapuskan haknya untuk nafkah pasangan, melemahkan persetujuan tersebut pada dasarnya. Salah nyataan palsu ini membentuk premis asas yang menjadi asas keseluruhan perjanjian, dan seterusnya kelulusan mahkamah. Jika persetujuan diasaskan atas kepalsuan material, persetujuan tersebut boleh dibatalkan, dan perintah-perintah persetujuan yang terhasil tidak boleh diguna pakai. Akibatnya, menurut bidang kuasa mahkamah yang sedia ada, mahkamah memerintahkan pembayaran balik nafkah pasangan berjumlah RM310,000 (lihat perenggan 65 & 72–73).

(6) Berkenaan dengan tuntutan plaintif untuk ganti rugi teruk, dengan mengambil kira keseriusan tindakan defendan-defendan, tempoh ia berterusan, dan tekanan serta prejudis yang dialami plaintif, mahkamah berpendapat bahawa pemberian ganti rugi teruk berjumlah RM400,000 adalah adil, berkadaran, dan munasabah dalam keadaan tersebut. Selain itu, mahkamah mendapati bahawa defendan pertama tidak menunjukkan apa-apa penyesalan atau kejujuran, sebaliknya, dia telah berulang kali cuba mengelak tanggungjawab dengan menegaskan

bahawa plaintif juga bersalah. Mahkamah mendapati bahawa tindakan defendan-defendan adalah keterlaluan dan sangat tercela yang mewajarkan pengenaan ganti rugi punitif atau teladan. Oleh itu, mahkamah berpuas hati bahawa pemberian ganti rugi teladan berjumlah RM300,000 adalah adil, berkadaran, dan sesuai (lihat perenggan 80, 86 & 88–89).]

Cases referred to

Bater v Bater [1950] 2 All ER 458, CA (refd)
Bumiputra-Commerce Bank Bhd v Top-A Plastic Sdn Bhd [2008] 5 MLJ 34, CA (folld)
Cassell & Co Ltd v Broome and another [1972] AC 1027, HL (refd)
Dato' Stanley Isaacs (suing by himself and as the administrator of the estate of To' Puan Suzanne Thomas, deceased) v The Government of Malaysia & Ors [2019] 8 MLJ 331; [2019] 1 CLJ 626, HC (refd)
Jatindra Nath Mohan Banerjee v Gouri Bala Debi AIR [1925] Cal 794, HC (refd)
Khaw Cheng Poon & Ors v Khaw Cheng Bok & Ors and another appeal [2005] 6 MLJ 540, CA (folld)
Kista Pillai v Amirthammal (1938) 2 MLJ 407; AIR [1938] Mad 833, HC (refd)
Ma Thein v Maung Mya Khin AIR [1937] Rang 67 (refd)
Rookes v Barnard [1964] 1 All ER 347, HL (refd)
Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784; [2017] 1 LNS 500, CA (refd)
Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 MLJ 1, FC (folld)
Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah (Sureshan Marcandan, party cited) [2012] 7 MLJ 315; [2011] 1 LNS 1167, HC (refd)
Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah [2011] 3 MLJ 123; [2009] 1 LNS 975, HC (refd)
Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors [2019] 1 MLJ 421; [2019] 2 CLJ 261, CA (refd)

Legislation referred to

Evidence Act 1950 s 44
Law Reform (Marriage and Divorce) Act 1976 s 82, 82(1)

KS Satkunabalan (with Dinesh Kannen Kandiah) (KS Satkuna & Co) for the plaintiff.
K Bhuvaneswari (with V Alahakone) (Bhuvan & Co) for the first defendant.
Absent for the second defendant.

Evrol Mariette Peters J:

INTRODUCTION

[1] The plaintiff's claim against the defendants ('this suit') was to set aside the spousal maintenance provisions of the decree nisi and subsequent consent orders and contempt orders on the basis of fraud, restitution of wrongfully paid maintenance, together with aggravated and exemplary damages.

THE FACTUAL BACKGROUND

[2] The plaintiff and first defendant were married in August 1994, and their union produced four children.

[3] The marriage later deteriorated significantly, leading to the first defendant's departure from the matrimonial home in August 2008. In doing so, she attributed the irretrievable breakdown of the relationship to the plaintiff's alleged acts of cruelty. The plaintiff, however, rejected this allegation and instead asserted that the true cause of the marital collapse was the first defendant's adulterous relationship with the second defendant.

[4] Shortly after leaving the matrimonial home, the first defendant filed an application for custody of the children, as well as for interim spousal and child maintenance ('the interim application'), which was granted in her favour.

[5] In October 2009, the first defendant filed a divorce petition ('the divorce petition'). Following a full hearing of the divorce petition in 2011, the Kuala Lumpur High Court granted a decree nisi on 31 October 2011 ('the decree nisi'), thereby dissolving the marriage between the plaintiff and the first defendant, awarding custody of three children of the marriage to the first defendant, and ordering the payment of spousal and child maintenance. The decree absolute was subsequently granted in February 2012.

[6] The plaintiff, dissatisfied with the decision of the High Court, appealed. That appeal was dismissed in 2014.

[7] In the meantime, in April 2012, the first defendant entered into a marriage with the second defendant in Sri Lanka. The plaintiff was unaware of this marriage, as neither the first defendant nor the second defendant registered it in Malaysia, or disclosed its existence to the court.

[8] Despite having remarried, the first defendant, between 2012 and 2019, repeatedly instituted contempt proceedings against the plaintiff in 2012, 2015, and 2017 to enforce the spousal and child maintenance orders. These

proceedings gave rise to several consent orders ('the consent orders'), each imposing further obligations on the plaintiff. Ultimately, the enforcement actions culminated in a committal order issued in May 2019 ('the committal order'), pursuant to which the plaintiff was imprisoned for 51 days due to non-compliance with multiple terms of the consent orders.

[9] In October 2019, the plaintiff discovered the first defendant's marriage to the second defendant. In this suit, filed in 2020 against both defendants, the plaintiff alleged that the entire foundation of the first defendant's financial claims was built on fraud and collusion with the second defendant. The plaintiff relied on s 44 of the Evidence Act 1950 ('the Evidence Act'), which reads:

> Any party to a suit or other proceeding *may show that any judgment*, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a court not competent to deliver it or *was obtained by fraud or collusion*. (Emphasis added.)

THE ISSUES

[10] The following broad issues were relevant for consideration:

(a) whether the first defendant had fraudulently concealed her adulterous relationship with the second defendant during the original divorce proceedings, between 2009–2011, culminating in the decree nisi granted in October 2011;

(b) whether the first defendant was 'living in adultery' with the second defendant between October 2011 and April 2012;

(c) whether the first defendant had fraudulently concealed her marriage to the second defendant;

(d) whether there was collusion between the first and second defendants to mislead the court for financial gain; and

(e) what were the implications of the first defendant's fraudulent conduct, if at all, on the court orders granted.

[11] The plaintiff's claim was allowed in part, with the defendants being held jointly and severally liable to reimburse the plaintiff for spousal maintenance paid from April 2012 until the cessation of such payments, as well as for aggravated and exemplary damages, and costs.

[12] The following were my reasons.

A CONTENTIONS, EVALUATION, AND FINDINGS

[13] At the outset, it was necessary to analyse the narrative in distinct phases, as the allegations themselves unfolded over time. These phases may be categorised as follows:

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(a) phase 1: the period from the breakdown of the marriage until the issuance of the decree nisi by the High Court in October 2011;

(b) phase 2: the period from October 2011 until the marriage of the first defendant to the second defendant in April 2012; and

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(c) phase 3: the period after the marriage of the first defendant to the second defendant in April 2012.

Phase 1: Whether the first defendant had fraudulently concealed her adulterous D *relationship during divorce proceedings*

[14] The plaintiff claimed that after the divorce petition was filed in 2009, and during the time when the first defendant filed applications for spousal and child maintenance, she had fraudulently concealed her adulterous relationship E with the second defendant.

[15] The plaintiff argued that there was evidence that the second defendant had purchased an apartment at Le Villas Condominium in Petaling Jaya ('Le Villas'), and that the first defendant had moved into Le Villas. F

[16] The plaintiff's evidence in this suit was that in 2008, the first defendant then became a director of People Power International Sdn Bhd (PPISB), a company incorporated by the second defendant in 2007, and that the first G defendant had replaced the second defendant's first wife as a company director; and that both first and second defendants had travelled to Sri Lanka for business, and were referred to by a local newspaper as husband and wife.

H **[17]** In my view, the plaintiff's argument was untenable for the following reasons.

[18] First, the purported 'fresh evidence' adduced in this suit, such as corporate documents, property records, and further contextual details of their I association, was information that was discoverable through reasonable diligence during the trial of the divorce petition, ending in October 2011.

[19] Secondly, upon careful scrutiny, it appeared that the evidence adduced by the plaintiff in this suit had already been canvassed by him during the hearing of the interim application, as well as in the full trial of the divorce petition.

[20] During the hearing of the interim application, the learned trial judge, Suraya Othman J (as she then was), in her grounds of judgment reported as *Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah* [2011] 3 MLJ 123; [2009] 1 LNS 975, held that, since the application was limited to interim spousal maintenance, any issues relating to adultery should be reserved for determination at the trial of the divorce petition.

[21] At the trial of the divorce petition, the plaintiff, again adduced evidence of what he claimed was proof of an adulterous relationship between the first and second defendants.

[22] According to the notes of proceedings and grounds of judgment reported as *Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah (Sureshan Marcandan, party cited)* [2012] 7 MLJ 315; [2011] 1 LNS 1167, the learned trial judge, Yeoh Wee Siam J (as she then was) had considered this evidence and made a definitive finding that there was 'no proof of any sexual act or adultery' between the parties, recognising only the existence of an 'unusually close relationship'. Upon evaluating the evidence adduced, the learned judge concluded that it did not meet the requisite threshold and was insufficient to substantiate the allegations advanced by the plaintiff.

[23] In my view, the question of whether adultery occurred, whether prior to the breakdown of the marriage or thereafter, but before the issuance of the decree nisi, had already been conclusively determined by the court. This conclusion was further reinforced by the dismissal of the plaintiff's appeal to the Court of Appeal, confirming that the matter was res judicata and cannot be re-litigated.

[24] It must be underscored that the principle of finality in litigation exists for a compelling and necessary reason: to ensure that disputes, once fairly and conclusively determined, are not endlessly re-opened. The plaintiff should not be permitted a second bite at the cherry under the guise of re-evaluating the weight of evidence that was fully canvassed and adjudicated upon.

[25] To allow such a collateral challenge would fundamentally undermine the finality of judgments, invite speculative and opportunistic litigation, and unjustly subject the first defendant to the burden of defending matters that were conclusively resolved more than a decade ago. The plaintiff had every

A opportunity to advance his case and failed to meet the requisite standard of proof. The litigation was, therefore, brought to a definitive end.

[26] Even if I were to proceed on the assumption that the evidence now relied upon by the plaintiff in this suit may properly be characterised as fresh, B this did not advance his case. The plaintiff's failure to adduce such evidence at the trial of the divorce petition was not occasioned by any active, deliberate, or unconscionable concealment on the part of the first defendant. Rather, it was attributable to deficiencies in the plaintiff's own case preparation and the manner in which he elected to conduct his case at trial. The law does not permit C a party to reopen concluded proceedings in order to remedy evidential gaps or forensic choices that, with reasonable diligence, could and should have been addressed at the original hearing.

[27] In that context, the plaintiff's allegations relating to pre-breakdown D adultery and during the divorce proceedings, and any alleged fraud said to arise therefrom, were not material.

[28] Further, even if I were to accept the plaintiff's submission that the present proceedings are not barred by the doctrine of res judicata, the plaintiff's E case would nevertheless fail on the merits. Whether viewed in the context of the earlier proceedings or in the present suit, the evidence adduced by the plaintiff was insufficient to establish adultery, and fell even further short of demonstrating any fraudulent concealment of such conduct.

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[29] It is trite law, as affirmed in *Bater v Bater* [1950] 2 All ER 458, that while adultery is to be proved on a balance of probabilities, the gravity of the allegation demands that the court should approach the evidence with a heightened degree of scrutiny before concluding that the standard has been G met. This is particularly so where the allegation is relied upon as the foundation for serious collateral consequences.

[30] Having carefully considered the totality of the evidence relied upon by the plaintiff, I was not satisfied that it had met this enhanced evidential H threshold. The plaintiff's case rested largely on inference and suspicion rather than cogent and compelling proof. Accordingly, the allegations of adultery, and by extension fraudulent concealment, were not made out.

[31] As such, for the purposes of phase 1 of this analysis, I was satisfied that I the plaintiff had failed to establish any fraud on the part of the defendants in concealing an alleged adulterous relationship, there being no evidence that adultery occurred in the first place.

Phase 2: Whether the first defendant was 'living in adultery' with the second defendant between October 2011 and April 2012

[32] Phase 2 of this narrative which required consideration in relation to the plaintiff's claim concerned the period commencing in October 2011, following the grant of the decree nisi, and ending with the marriage of the first and second defendants in April 2012.

[33] Reference was made to s 82 of the Law Reform (Marriage and Divorce) Act 1976 ('the Law Reform (Marriage and Divorce) Act') which reads:

> Section 82 — Right to maintenance to cease on remarriage
>
> (1) The right of any divorced person to receive maintenance from his or her former spouse under any order of court *shall cease on his or her marriage to or living in adultery* with any other person.
>
> (2) The right of any divorced person to receive maintenance from his or her former spouse under an agreement shall cease on his or her marriage to or living in adultery with any other person unless the agreement otherwise provides. (Emphasis added.)

[34] Section 82(1) of the Law Reform (Marriage and Divorce) Act imposes an absolute statutory bar on a former spouse's entitlement to maintenance upon that spouse's remarriage or upon proof that the spouse is living in adultery.

[35] The phrase 'shall cease' in s 82(1) of the Law Reform (Marriage and Divorce) Act is imperative. The right is extinguished *ipso facto* upon marriage or adulterous cohabitation. No court order is required to terminate it, as that occurs by operation of law.

[36] The statutory purpose is to prevent a former spouse from benefiting financially from two households simultaneously, commonly referred to as 'double-dipping', and to ensure that maintenance obligations arising from a dissolved marriage cease once a new domestic partnership is established.

[37] The term 'living in adultery' under s 82(1) of the Law Reform (Marriage and Divorce) Act is, in reality, a misnomer. Adultery, by definition, can only occur during a valid marriage. Once a marriage has been dissolved, any sexual relationship the former spouse enters into cannot technically constitute adultery. In this context, the phrase is understood to mean cohabitation in a conjugal or sexual relationship with another person.

[38] The courts have considered the proper interpretation of the term 'living in adultery' in several cases. In *Jatindra Nath Mohan Banerjee v Gouri Bala*

Debi AIR [1925] Cal 794, it was held that a single act of adultery is insufficient to establish that a person is 'living in adultery'; continuity of conduct must be shown. Similarly, in *Kista Pillai v Amirthammal* (1938) 2 MLJ 407; AIR [1938] Mad 833, the court clarified that the term denotes continued adulterous conduct. In *Ma Thein v Maung Mya Khin* AIR [1937] Rang 67, the court explained that 'living in adultery' refers to a sustained course of wrongful conduct rather than an isolated lapse from virtue.

[39] The plaintiff's counsel relied on the fact that, sometime in November 2011, the second defendant's registered address was officially changed to Le Villas, which was, at the material time, the residence of the first defendant. The plaintiff submitted that this circumstance was indicative of cohabitation between the defendants.

[40] Counsel further contended that, in light of the court's finding that the defendants were already in a close relationship and were planning to solemnise their marriage, which ultimately took place in April 2012, it could reasonably be inferred that the defendants engaged in a sexual relationship during the period between October 2011 and April 2012.

[41] I was unable to agree with the plaintiff's contention for the following reasons. First, a mere change of address does not, of itself, establish cohabitation or 'living in adultery'. Such an inference would be both unfair and potentially dangerous.

[42] Secondly, the fact that the defendants had expressed an intention to marry, an intention that ultimately culminated in their marriage in April 2012, did not, of itself, constitute proof that the defendants had engaged in a sexual relationship prior to that date.

[43] It is important to recognise that not all individuals engage in pre-marital sexual intercourse. Pre-marital abstinence is a deliberate choice for many, influenced by personal, religious, or cultural beliefs, as well as moral or ethical considerations. Some couples choose to refrain from sexual relations until their marriage is formalised, whether out of adherence to religious teachings, respect for cultural norms, or personal convictions regarding commitment and emotional readiness.

[44] Courts and decision-makers must, therefore, exercise caution in assuming that sexual activity is an essential component of a close and intimate relationship. Abstinence prior to marriage is a socially recognised and legitimate practice, and the presence or absence of sexual relations should be assessed in the broader context of the relationship, rather than being treated as a presumption undermining the authenticity or validity of the union.

[45] Accordingly, upon a careful consideration of the evidence adduced by the plaintiff, and in particular the absence of cogent proof to the contrary, it was my view that the plaintiff had failed to discharge the burden of establishing that the first defendant was living in adultery with the second defendant, between October 2011 and April 2012.

[46] In the circumstances, the statutory threshold required to disentitle the first defendant to spousal maintenance between October 2011 and April 2012 was not met.

Phase 3: Whether the first defendant had fraudulently concealed her marriage to the second defendant

[47] It was undisputed that the first defendant had not disclosed her marriage to the second defendant throughout committal proceedings between 2012 and 2019. The crucial issue was whether she had done so fraudulently.

[48] Fraud constitutes a deliberate act of deception undertaken with the specific intention of achieving an unlawful or unjust outcome. Broadly defined, it aims to deprive another person of property, a legal right, or money; to obtain a benefit, financial or otherwise, to which one is not rightfully entitled; or to cause loss or harm to another. This intentional dishonesty is recognised both as a civil wrong, or tort, for which the victim may seek compensation, and as a criminal offence punishable by the state.

[49] Based on the authorities submitted on the concept of fraud, it can be distilled that for fraud to be legally established, whether in a civil suit or a criminal prosecution, several essential elements must be proven.

[50] First, there must be a misrepresentation of a material fact, which can be an affirmative false statement, an active concealment of the truth, or a deliberate omission of information significant enough to influence the victim's decision. Secondly, the person making the representation must possess knowledge of its falsity. Thirdly, the misrepresentation must be made with the intent to deceive**,** specifically intending that the representee will rely on the false information. Fourthly, the representee must demonstrate reasonable reliance, meaning that they actually did rely on the misrepresentation, and that such reliance was justifiable under the circumstances. Finally, this reliance must have resulted in actual damage or loss to the representee, completing the chain of causation that links the deceptive act to a tangible harm. Together, these elements form the foundation of a legal claim or charge of fraud.

[51] During phase 3, namely after the marriage of the first and second defendants, I concluded, based on very telling evidence adduced, that the

defendants had fraudulently concealed their marriage to deceive the plaintiff into continuing to pay spousal maintenance. The following were my reasons.

[52] First, the first defendant had concealed her marriage to the second defendant by not registering it. Counsel for the plaintiff had brought the court's attention to the provisions of the Law Reform (Marriage and Divorce) Act which mandates for parties to register their foreign marriages. The provisions read:

> Section 31 — Registration of foreign marriage by a person citizen of or domiciled in Malaysia
>
> (1) Where any person who is a citizen of or is domiciled in Malaysia has contracted a marriage abroad, not being a marriage registered under section 26, such person shall —
>
> (a) *within six months after the date of such marriage*, appear before the nearest or most conveniently available Registrar abroad; and
>
> (b) *register such marriage.*
>
> (1A) Where before the expiry of six months under paragraph (1)(a), either or both parties return to Malaysia and the marriage was not registered, such person shall —
>
> (a) within six months of arrival in Malaysia, appear before any Registrar; and
>
> (b) register such marriage.
>
> (1B) A person who applies to register a marriage under subsection (1) or (1A) shall —
>
> (a) produce to such Registrar the certificate of such marriage or such evidence either oral or documentary as may satisfy the Registrar that such marriage took place;
>
> (b) furnish such particulars as may be required by the Registrar for the due registration of such marriage; and
>
> (c) apply in the prescribed form for the registration of the marriage to be effected and subscribe the declaration therein.
>
> (2) A Registrar may dispense with the appearance of one of the parties to the marriage if he is satisfied that there exists good and sufficient reason for the absence of such party and in such case the entry in the marriage register shall include a statement of the reason for his or her absence.
>
> (3) Upon the registration of any marriage under this section, the Registrar shall deliver the triplicate copy of the register to the parties to the marriage and the original to the Registrar General and the duplicate to the Superintendent Registrar who shall cause such copies to be bound together to constitute the Foreign Marriages Register.

(4) Where the parties to a marriage required to be registered under this section have not appeared before a Registrar within the period as prescribed in subsection (1), the marriage may, upon application to the Registrar, be registered by him on payment of such penalty as may be prescribed.

Section 35 — Omission to appear before Registrar within prescribed time

Any person who, being required by section 31 to appear before a Registrar, *omits to do so within the prescribed time shall be liable on conviction* to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both. (Emphasis added.)

[53] When questioned as to the failure to register her marriage to the second defendant, the first defendant stated that she was unaware of any obligation to do so in Malaysia. In my view, this asserted ignorance was unacceptable, particularly as it recurred consistently throughout her account.

[54] Secondly, the first defendant filed multiple committal applications to enforce, inter alia, the order for spousal maintenance. On each occasion, she failed to disclose this material fact, notwithstanding that she was under a clear and continuing duty to do so. This omission was particularly serious given that the applications for leave to commence committal proceedings were made ex parte, where the court was required to rely solely on the candour and accuracy of the applicant.

[55] In such circumstances, the obligation of full and frank disclosure was heightened. The repeated failure to disclose material facts not only undermined the integrity of the proceedings but also amounted to an abuse of the court's process, warranting close judicial scrutiny and, where appropriate, the imposition of punitive or exemplary consequences.

[56] Thirdly, the explanations advanced by the first defendant for her failure to disclose her marriage to the second defendant were inconsistent and vacillating. At different points, she claimed that she was unaware of any duty to disclose, that the omission was an honest mistake, and that her solicitors had failed to advise her accordingly. None of these explanations was satisfactory. The shifting nature of her account undermined her credibility and suggested an absence of candour.

[57] I also found it untenable that the first defendant sought to lay the blame at the feet of her legal advisers without calling any of them to give evidence or to explain the omission, particularly where such an allegation, if true, could and should have been substantiated.

[58] My conclusion was further reinforced by the fact that, at the hearing of the interim application, the plaintiff had expressly invoked s 82 of the Law

Reform (Marriage and Divorce) Act. At that time, he had already contended that the first defendant was engaged in an adulterous relationship with the second defendant. The invocation of s 82 of the Law Reform (Marriage and Divorce) Act in those proceedings underscored that the first defendant was aware of the implication of such provision, namely, its effect on limiting her entitlement to spousal maintenance, thereby highlighting the significance of the issue throughout the litigation of the committal proceedings.

Whether there was collusion between first and second defendants

[59] As far as the second defendant was concerned, it was my view that he had, in fact, colluded with the first defendant in extracting spousal maintenance from the plaintiff, based on the following reasons.

[60] In this suit, a judgment in default ('JID') was entered against the respond to the cause papers. The second defendant later applied to have the JID set aside, which was granted by the court in March 2021. However, the plaintiff appealed this decision, and the Court of Appeal ultimately reinstated the JID against the second defendant in October 2023.

[61] The first defendant's inability to provide any credible account for the second defendant's deliberate absence from these proceedings is striking. Given their marital relationship, her professed ignorance of his whereabouts is simply untenable. In my view, this evasive conduct constituted further clear proof of the fraudulent collusion between the defendants, demonstrating a concerted effort to mislead the court and conceal their joint participation in the scheme.

Implications of the defendants' fraudulent conduct, if at all, on court orders obtained subsequently

[62] The plaintiff's action, premised on allegations of fraud, pursued two principal forms of relief. The primary remedy sought was for all previous court orders to be set aside. The secondary remedy was monetary compensation, comprising, among others, aggravated damages, exemplary damages, and reimbursement of spousal maintenance.

[63] The first defendant contended that setting aside the consent and committal orders in their entirety would be inappropriate. She argued that the plaintiff's non-compliance extended beyond the spousal maintenance provisions to include other material terms of the decree nisi, such as child maintenance. Therefore, invalidating previous court orders solely on the basis of spousal maintenance, she submitted, would be unjust and inequitable, as such court orders encompassed distinct and independent obligations.

[64] I found myself unable to accept the first defendant's contention. The consent orders, while founded upon the agreement of both plaintiff and first defendant, derived its binding force from the sanction of the court. It was, therefore, not immune from impeachment if it was procured by deception.

[65] The critical fact here was that the plaintiff's agreement to the consent orders was secured by fraud. The first defendant's deliberate concealment of her remarriage, a fact which, under s 82 of the Law Reform (Marriage and Divorce) Act, extinguished her very entitlement to spousal maintenance, vitiated the consent at its root. This fraudulent misrepresentation formed the fundamental premise upon which the entire agreement, and subsequently the court's approval, was based. Where consent was founded on a material falsehood, such consent was rendered voidable, and the resulting consent orders could not stand.

[66] My reasoning was guided by the principle established in the Federal Court case of *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 3 MLJ 1, which affirmed that fraud of this nature did not operate in a compartmentalised manner. The fraud did not merely taint the discrete provision for spousal maintenance; it spread like a contagion, infecting the consent orders as a whole. This was because the court's jurisdictional act of endorsing the consent orders was predicated on a materially false representation of the parties' circumstances. To allow any part of such order so obtained to remain enforceable would be to condone the means by which it was secured and to perpetuate an injustice.

[67] The maxim *fraus omnia corrumpit* or fraud corrupts everything, aptly encapsulates this doctrine. The fraudulent act corrupts the entire transaction, rendering it voidable in its totality. Consequently, I concluded that the only just and legally coherent remedy was for the entire consent orders as the resulting committal order to be set aside *in toto*.

[68] It was, however, crucial to emphasise that nothing in this judgment should be construed as relieving or absolving the plaintiff of his continuing obligations to pay child maintenance or to comply with any other obligations imposed upon him under the decree nisi following the dissolution of the marriage. Those obligations are distinct, remain valid and enforceable, and were not affected by the findings in this suit, which were confined solely to the issue of spousal maintenance and the consequences flowing from the fraudulent conduct established.

[69] The plaintiff further sought reimbursement of the total amount of spousal maintenance paid to the first defendant.

[70] The first defendant contended that there was no statutory or legal basis empowering the court to order the reimbursement of spousal maintenance that had already been paid, particularly where such payments were made in compliance with court orders that were valid and enforceable at the material time.

[71] I acknowledged that there is no express provision in the Law Reform (Marriage and Divorce) Act which specifically empowers the court to order the reimbursement of spousal maintenance already paid, even where the underlying maintenance orders are subsequently impugned or shown to have been improperly obtained. Nevertheless, it did not follow that the court was, thereby, rendered powerless.

[72] The court retains its inherent jurisdiction to prevent injustice and to grant consequential relief where the circumstances so warrant, particularly where the continued retention of such payments would offend principles of equity and fairness.

[73] It was not in dispute that the plaintiff had paid an aggregate sum of MYR310,000 in spousal maintenance to the first defendant from April 2012 until the cessation of payments, pursuant to subsisting court orders then in force. In light of my findings that the said court orders were subsequently impugned, and that the payments were made in circumstances where the first defendant was not legally entitled to receive them, I was satisfied that it would be unjust to permit the defendants to retain the benefit of those sums. I, therefore, ordered that the said amount be reimbursed by the defendants.

[74] With regard to aggravated damages, it was worth noting the concept of aggravated damages as explained by Lord Diplock in *Cassell & Co Ltd v Broome and another* [1972] AC 1027, where his Lordship had described it as 'compensation for the injured feelings of the plaintiff, where the sense of injury resulting from wrongful physical act is justifiably heightened by the manner in which or motive for which the defendant did it'.

[75] This definition had been approved and adopted by several Malaysian cases including *Dato' Stanley Isaacs (suing by himself and as the administrator of the estate of To' Puan Suzanne Thomas, deceased) v The Government of Malaysia & Ors* [2019] 8 MLJ 331; [2019] 1 CLJ 626 and *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784; [2017] 1 LNS 500, where in the latter case, it was stated by Mohd Zawawi Salleh JCA (a he then was):

> ... aggravated damages are classified as a species of compensatory damages, *which are awarded as additional compensation where there has been intangible injury to the interest of personality of the plaintiff*, and where this injury has been caused or

exacerbated by the exceptional conduct of the defendant. (Emphasis added.)

[76] In the present case, the plaintiff contended that his suffering went beyond the mere fact of being cited for contempt. He emphasised that pursuant to the committal order, he had been incarcerated for a period of 51 days, resulting in a significant deprivation of liberty, reputational harm, and emotional distress, which he argued could not be fully or adequately compensated by a simple restitution of monies paid.

[77] The first defendant, on the other hand, argued that the 51 days of imprisonment arose from non-compliance with other terms of the consent orders.

[78] Although I acknowledged the fact that the consent orders contained other terms that the plaintiff had previously not complied with, the fact remained that the plaintiff's incarceration resulted from a single, composite finding of contempt. It was neither practical nor legally sound to attempt to disaggregate the period of imprisonment in order to attribute specific days to particular breaches, including the failure to comply with the spousal maintenance obligation. Any such exercise would be speculative and artificial, as the consequences of the various breaches were inextricably intertwined. To attempt otherwise would be akin to unscrambling a scrambled egg, which was undeniably an exercise that was simply impossible.

[79] Accordingly, having regard to the cumulative and prejudicial effect of the consent orders and committal order when viewed holistically, and notwithstanding that the plaintiff sought aggravated damages in excess of MYR1m against each defendant, I was unable to accede to that quantum. This was because the plaintiff himself bore some measure of responsibility, having not complied with certain original terms under the decree nisi.

[80] However, taking into account the seriousness of the defendants' conduct, the period over which it persisted, and the distress and prejudice occasioned to the plaintiff, I was of the view that an award of aggravated damages in the sum of MYR400,000 was fair, proportionate, and reasonable in the circumstances.

[81] With regard to exemplary damages sought by the plaintiff, such concept was explained by the Court of Appeal in *Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors* [2019] 1 MLJ 421; [2019] 2 CLJ 261, and *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784; [2017] 1 LNS 500, where in the latter case, it was stated by Mohd Zawawi Salleh JCA (as he then was):

A [33] *The exemplary damages or punitive damages — the two terms now regarded as interchangeable* — are additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, *or where he*
B *has acted with a 'contumelious disregard' for the right to the plaintiff*. The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award may also have an important function in vindicating the rights of the plaintiff. (See *Rookes v Barnard* [1964] 1 All ER 347; *A B v. Southwest Water Services* [1993] All ER 609 *Broome v Cassell & Co* [1971] 2 QB
C 354, *Laksmana Realty Sdn Bhd v Goh Eng Hwa and another appeal* [2006] 1 MLJ 675; [2005] 4 CLJ 871.) (Emphasis added.)

[82] In the case of *Rookes v Barnard* [1964] 1 All ER 347, referred to in *Sambaga Valli KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another*
D *appeal,* two categories were recognised for a claim for exemplary/punitive damages:

... The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category — I say this with particular reference to the facts of this case — to oppressive action by private
E corporations or individuals. Cases in second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff ...

F **[83]** I was also guided by the cases of *Khaw Cheng Poon & Ors v Khaw Cheng Bok & Ors and another appeal* [2005] 6 MLJ 540, and *Bumiputra-Commerce Bank Bhd v Top-A Plastic Sdn Bhd* [2008] 5 MLJ 34, where in the latter case, it was stated by Heliliah Mohd Yusof JCA in the following passages:

G [48] This aspect of the appeal is also related to the claim for exemplary damages. In *Khaw Cheng Poon & Ors v Khaw Cheng Bok & Ors and another appeal* [2005] 6 MLJ 540 the Court of Appeal in addressing the issues of exemplary damage stated, inter alia, per Gopal Sri Ram JCA:

... *Exemplary damages are only awarded in special circumstances*. These
H circumstances are contained in the speech of Lord Devlin to which we have already referred, that no new categories are admissible to the Devlin list has now been settled in the decision of the House of Lords in *Cassell & Co Ltd v Broome* [1972] AC 1027 (Emphasis added.)

I **[84]** Exemplary damages, therefore, are not compensatory in nature, but are damages relied upon by the court to punish the wrongdoer for contumelious and reprehensible conduct, in disregard of the plaintiff's rights. It also acts as a deterrent to others who are contemplating conduct of a similar nature.

[85] In the present case, this court must state in the clearest terms that it will not tolerate litigants taking matters into their own hands, advancing speculative allegations, or engaging in conduct calculated to mislead or defraud the court. Family proceedings are grounded in duties of utmost candour and good faith. Any attempt to abuse the process of the court by fabrication, concealment, or reckless disregard for the truth strikes at the very integrity of the administration of justice.

[86] The defendants' conduct was egregious and utterly reprehensible. The first defendant not only attempted to collect spousal maintenance to which she had no legal entitlement, but further abused the court's processes by initiating committal proceedings to enforce that same maintenance. On each occasion, she misrepresented material facts, thereby deceiving the court. In so doing, the first defendant 'thumbed her nose at the court', displaying a calculated, contumelious, and brazen disregard for the court's authority, its orders, and the solemn duty of candour owed in judicial proceedings.

[87] To compound matters, the second defendant deliberately failed to respond to the serious allegations levelled against him. He neither filed any affidavit evidence nor offered any explanation to rebut those allegations. In the circumstances, this omission could not be treated as a mere oversight and justified the drawing of an adverse inference as to his culpability.

[88] Instead of demonstrating any remorse or candour, the first defendant repeatedly sought to deflect responsibility by asserting that the plaintiff was likewise not blameless. Such a line of argument was wholly misconceived. The conduct of the defendants must be assessed on its own merits, and the wrongdoing of one party cannot be excused or mitigated by pointing to alleged shortcomings on the part of another. Two wrongs do not make a right, and the court cannot countenance conduct which openly disregards its orders or undermines the authority and integrity of the judicial process.

[89] Such conduct on the part of the defendants warranted the imposition of punitive or exemplary damages, in addition to any other consequential relief the court considered just and necessary in the circumstances. Accordingly, I was satisfied that an award of exemplary damages in the sum of MYR300,000 was fair, proportionate, and appropriate.

CONCLUSION

[90] In the interest of justice, and after careful scrutiny and judicious consideration of all the evidence before this court, including the written and oral submissions of the plaintiff and first defendant, this suit was allowed partially with costs.

[91] To recap, the first and second defendants were held jointly and severally liable to pay the following:

(a) reimbursement of spousal maintenance — MYR310,000;

(b) aggravated damages — MYR400,000;

(c) exemplary damages — MYR300,000; and

(d) costs — MYR200,000 (Subject to allocator).

Plaintiff's claim allowed in part with costs of RM200,000 subject to allocator.

Reported by Dzulqarnain Ab Fatar